

# **2014 Annual Report of the Iowa Consumer Credit Code**

The Attorney General is directed by Chapter 537 of the Iowa Code to administer the Iowa Consumer Credit Code (hereinafter “ICCC”). Since 1974, the Attorney General has delegated primary authority for the administration and enforcement of the ICCC to the Consumer Protection Division (hereinafter “CPD”). The head of the CPD is the Administrator of the ICCC and has traditionally appointed a Deputy Administrator to oversee the day-to-day duties of regulating and enforcing the ICCC. The current Administrator is Bill Brauch, Director of the CPD, and the current Deputy Administrator is Assistant Attorney General Jessica Whitney.

The Administrator's responsibilities under the ICCC include resolving complaints, investigating serious complaints, formulating and carrying out litigation, drafting legal opinions, conducting consumer credit educational activities and programs, and monitoring the status of consumer credit in the state. The Administrator coordinates with other Iowa agencies, other states with versions of the Uniform Consumer Credit Code, and federal agencies with oversight of the consumer credit industry.

Iowa Code section 537.6104(5) directs the Administrator to report annually on the ICCC and the state agencies charged with administering the ICCC, as well as the general availability of credit. This report is broken down into sections that correspond with the reporting requirements of Iowa Code section 537.6104(5).

The contents of this report are compiled from the previous year's report, with relevant information updated to reflect recent changes.

## **1. Consumer Complaints**

Iowa Code section 537.6104 allows the Administrator of the ICCC to handle consumer complaints and encourage voluntary compliance with Code requirements. The Administrator engages in a conscious effort to combine those two responsibilities. When handling consumer complaints, the Administrator generally seeks voluntary compliance first and takes legal action second or as needed.

The processing, assignment, and handling of ICCC complaints are a part of the daily activity of the CPD. The CPD received a total of 2669 written consumer complaints during the 2014 calendar year, at least 531 of which were filed directly pursuant to the ICCC. Though complaints whose main focus was credit concerned about 20% of the total received by the CPD, hundreds of other complaints also involved credit although not classified as such, like complaints about home improvements and auto issues.

Complaints concerning credit ranked highly in the top categories of consumer complaints and should continue to be regarded as an area of major concern. The credit complaints break down as follows, with their rank in relation to other categories of complaints:

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|--------------------|-----|
| 1. Home Mortgages  | 217 |
| 2. Debt Collection | 185 |

11. Motor Vehicle Credit	68
19. Credit Card Billing	31
20. Student Loans	30

For all complaints, many of the inquiries handled by the CPD can be resolved by explaining the applicable provisions of the ICCC to those involved in the complaint. Other times, the office must first investigate the complaint and determine the facts in order to outline to the parties how the law applies to their situation. The CPD strives to resolve the complaints in a manner that makes the consumer whole, where appropriate.

Complaints concerning debt collection practices continue to appear close to the top of the list. The CPD's policy toward debt collection complaints is to resolve them at the administrative level, obtain redress for any aggrieved consumers, and stop any problematic practices. Article 7 of the ICCC sets forth with impressive thoroughness exactly what debt collection techniques, practices, and procedures are prohibited. Most debt collection complaints are filed by consumers aggrieved by what they believe is an unlawful debt collecting practice. Generally, the CPD resolves the problem through an informal agreement with the lender or debt collector. When the ICCC is clearly violated, the CPD requires not only redress for the aggrieved consumer but the Administrator may seek and obtain an Assurance of Discontinuance pursuant to Iowa Code section 537.6109 where the creditor or collector clearly states that they have been notified as to what is wrong with their practice in question and that they are agreeing to discontinue it. In some instances, the creditor or collector is able to demonstrate either that there has been no violation of the ICCC or that any violation was unintentional and the creditor or collector intends to comply with the statute.

When informal resolution of debt collection complaints is insufficient, the CPD engages in enforcement actions to ensure Iowa lenders and debt collection agencies keep their practices in compliance with the ICCC. Members of the CPD also consult with other states regarding debt collection and frequently participate in multistate efforts to investigate larger debt collection companies.

Additionally, the CPD continues to receive a number of complaints based upon problems arising from home mortgages, many of them mortgage foreclosure rescue scams. The CPD handles these complaints on an individual basis. The CPD has also been involved in multistate and federal efforts to attempt to track down these often temporary companies.

Subprime auto finance continues is a growing area of concern. In addition to traditional “Buy Here, Pay Here,” dealers, the securitization of subprime retail installment contracts has resulted in increases in the number of auto finance complaints and ICCC violations. The CPD is looking closely at this area and pursuing potential multistate action.

In addition to the formal written complaints the CPD receives, the day-to-day work of the attorneys and investigators assigned to ICCC inquiries, complaints, and investigations often involves interacting with the borrowing public, credit industry representatives, attorneys, and representatives of other state agencies about compliance with the ICCC. Iowa Code section 537.6104(1)(d) requires the Administrator to counsel persons and groups on their ICCC rights

and duties. The day-to-day activities in administering the ICCC involve numerous emails, telephone calls, letters, informal interpretations, responses, and resolutions between the CPD staff office and the various parties outlined above. In addition to advice given via phone and email, the CPD also issues what are called informal advisory opinions, which are written responses to questions concerning credit and/or the interpretation of the ICCC. In 2014, the office did not publish any informal advisory opinions, but did respond to numerous phone and email requests concerning the interpretation of the ICCC.

## **2. Credit Education**

The ICCC also requires that the Administrator establish educational programs on credit practices and problems. *See* Iowa Code § 537.6104(1)(e). With limited staff to devote to ICCC matters, the CPD has made education for consumers, the lending industry, and members of the Bar a top priority. The recent financial crisis has only served to underscore the need for greater financial education.

Once again CPD staff members made a number of presentations to large groups concerning state and federal consumer credit laws. In July the Deputy Administrator and Investigator Kathi Gosnell gave a radio interview regarding student loans with a Knoxville radio station. That same month, Investigator Gosnell was on WHO-radio to discuss student loan consolidation scams. Later in July, the Deputy Administrator presented at the annual Jump\$tart conference for educators on student loans and high interest internet loans. Finally, that same month the Deputy Administrator was part of Iowa Watch's radio in-depth look at payday loans.

The CPD also participates in a variety of less formal consumer-oriented conferences, seminars, meetings, and speaking presentations, including presentations to graduate level college classes, law school classes, high school classes, and senior citizens' groups. The attorneys and investigators of the CPD speak around the state on the general topic of consumer fraud and protection in Iowa. Though these presentations deal more generally with the overall work of the CPD, they also discuss the basic provisions of the ICCC and often respond to specific ICCC questions from audience members. The CPD also assists with an "Attorney General Booth" each year at the Iowa State Fair, staffed by employees from throughout the Attorney General's office. Many of the questions from consumers visiting the booth pertain to consumer credit, and many of the educational materials offered to the public through the booth seek to inform consumers about the ICCC and its consumer credit protections.

The Division has also provided guidance and education in the field of motor vehicle financing. The staff has given advice on continuing education courses for motor vehicle dealers, focusing on motor vehicle finance. The staff also routinely answers questions from motor vehicle trade groups and many of those questions are finance-related. Throughout 2014, a video presentation featuring CPD Director Brauch was shown as part of the training of Iowa used motor vehicle dealers pursuant to the requirements of Iowa Code section 322.7A. Consumer credit issues were interwoven throughout the presentation.

In monthly publications entitled "Monthly Consumer Focus" the CPD reaches tens of thousands of Iowans. The "Monthly Consumer Focus," are bulletins that provide tips and

information to consumers on relevant consumer issues. During 2014 topics addressed in these bulletins included student loan rescue scams, credit repair, credit scores, foreclosure rescue scams, and the use of gift cards and certificates among others. The bulletins are sent statewide to over 3,000 groups and communities and are free to reprint and redistribute. They are also available on the Attorney General's website.

In addition, to public speaking, meetings, and publications, staff members also have informal discussions and meetings with affected individuals. It is not uncommon for representatives of various businesses or members of the credit industry to come into the CPD office with their attorneys to ascertain what they must do to comply with the ICCC. Staff members regularly respond to questions posed by other state agencies, as well. The many ICCC-related questions posed to staff members during all these public contacts shows that there is still a great deal of confusion about the law, and that even a stronger educational campaign may be needed.

### **3. Developments in Iowa Consumer Credit Law**

In 2014 there were no Iowa or federal reported or unreported cases on the ICCC.

### **4. Agency Reports on Consumer Credit**

Two state regulatory units are charged by Iowa Code § 537.6105 with enforcing the ICCC with respect to the lending institutions they license and regulate: the Iowa Division of Banking and the Iowa Division of Credit Unions. Throughout the year the Administrator has frequent contact with these agencies regarding interpretation and enforcement of credit code provisions and changes in the consumer credit industry. The Administrator notifies a regulatory agency when the CPD receives a complaint involving one of the agencies' licensees. Likewise, the agencies alert the Administrator of serious violations that come to their attention. In 2014 the Deputy Administrator worked with the Iowa Division of Banking to bring an administrative action and eventually reach a settlement with online lender, and Iowa Division of Banking licensee, CashCall.

Each agency examines its licensees for ICCC compliance during the agency's regular, periodic examinations. The Credit Union Division, overseeing the state's 106 credit unions, examines each credit union every twelve to eighteen months. The Credit Union Division received seven ICCC-related complaints in 2014. The Banking Division oversees licensing for 290 state-chartered banks and 763 loan companies, including delayed deposit locations, mortgage bankers, industrial lenders, and regulated lenders. State-chartered banks are examined every 12 to 18 months, alternating with the federal regulated. The various loan companies are examined every 12 to 24 months depending on the type of company. Delayed deposit companies, industrial lenders, and regulated lenders are examined annually. Mortgage bankers, nonresident industrial lenders, and nonresident regulated lenders are examined every 24 months. The Banking Division received 38 complaints in 2014, relating to the ICCC of which 11 were about unlicensed internet lending.

## **5. Consultation With Other Jurisdictions**

The CPD benefits from the experience and knowledge of credit code administrators in other states by participating in the American Conference of Uniform Consumer Credit Code States (ACUCCCS) every year. The conference is an excellent forum at which to discuss common problems in UCCC administration and collectively work toward fair resolution. The meetings enable each state to keep its administration of its consumer credit code in harmony with other jurisdictions as required by section 537.6104 of the Iowa Code.

The 2014 ACUCCCS meeting was held in Jackson, Wyoming. All credit code states attended the meeting except Indiana. The hottest topic for discussion was subprime auto lending, including a discussion of new problems with the securitization of subprime auto loans. Internet lending controlled or facilitated by Native American Tribes continued to be a very relevant topic, and the states updated each other on the ongoing litigation involving the legality of this type of lending. Internet lending by domestic and foreign corporations was also discussed. States shared updates regarding their various experiences working together in large multistate groups as well as with the federal Consumer Financial Protection Bureau. Additionally, the group held an in-depth discussion about potential credit bubbles in the areas of student loans and credit cards. And, as always, discussion on legislative changes to each state's statute was held.

The ACUCCCS states also keep in regular contact via an email listserve. The listserve provides an excellent opportunity for discussion of potential changes in the law regarding consumer credit and the states' interpretation of portions of the ICCA.

## **6. Availability of Consumer Credit**

By keeping in frequent contact and exchanging information with other state consumer credit administrators throughout the year, the CPD has been able to keep abreast of trends in the nationwide consumer credit industry. Unfortunately, we have been unable to compile information regarding the availability of credit to Iowa consumers due to the high cost of such data gathering and lack of any current data gathering system.

However, from its contacts with consumers, businesses, and the industry, as well as other state agencies, the CPD is able to assess the availability of credit anecdotally. Currently, credit is widely available to almost all Iowa consumers. However, the quality of the credit that may be available to some is suspect. Thanks to the proliferation of direct deposit services (also known as payday loans) and hard-to-police internet loans, much of the credit available to some consumers is only available at a very high cost. Higher interest open-end credit, in the form of credit cards, also appears to be widely available. Additionally, student loan debt continues to rise, and is of a real concern in the future as the debt becomes due and is particularly difficult to discharge in bankruptcy. Subprime auto financing is a burgeoning concern with many auto loans now being packaged and sold as securities. There is a fear that subprime auto loans might follow the same path that subprime mortgages did and lead to more global issues.

## **7. Changes to the ICCC**

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. In 2014, the Attorney General worked with the legislature, the Iowa Division of Banking, the Iowa Division of Credit Unions, and many other groups to update several provisions of the ICCC. House File 2324, as passed and signed by the Governor, made some of these changes. The most important of these updates, from the Attorney General's perspective, expanded the scope of consumer transactions that are protected by the ICCC. Previously, only consumer credit transactions under \$25,000 were covered by the ICCC. The legislation expanded the jurisdictional limit of the ICCC by tying it to the threshold amount of the Federal Truth and Lending Act, which is currently \$54,600 and adjusts annually based on the consumer price index. The previous jurisdictional limit of \$25,000 had been set in 1974, a value that would well exceed \$100,000 today. In fact, the average cost of a new car is well over \$25,000 which means that many motor vehicle credit transactions were excluded from ICCC protections and state regulations altogether. The change from the dated \$25,000 limit to the Federal Truth and Lending Act threshold amount gives more Iowa consumers the rights that the ICCC seeks and was intended to grant, particularly in terms of motor vehicle transactions.

The new legislation also clarified that a single charge imposed by a financial institution for returning an item presented against nonsufficient funds or for paying an item that overdraws an account is not a finance charge and is therefore not covered by the ICCC. "Item," according to the legislation, includes any form of authorization or order for withdrawal of funds from an account such as a check, ATM card, debit card, automated clearinghouse or other means.

Further, House File 2324 allowed for creditor attorney fee provisions in consumer credit transaction agreements that are over \$25,000 and secured by an interest in land. Previously, the ICCC rendered such attorney fee agreements unenforceable if they provided that the consumer must pay the creditor's attorney fees, if the creditor prevails.

The interpretation and enforcement of the Iowa Consumer Credit Code is an important area where the activities of the Attorney General's office affect every Iowan. As the office deals with broad authority in the areas of interest rates, lending practices, and debt collection, and as Iowans continue to face credit and debt challenges, it is clear that the protections afforded consumers by the ICCC are more important than ever.